

REMARKS/ARGUMENTS

1. *Status of the claims*

Claims 16 and 17 are amended and claims 40-41 are added. Claims 15-17, 23-26 and 31-40 are currently pending with entry of the Amendment.

Support for the amendments can be found in originally-filed claims 12-14. No new matter is added.

2. *Rejection under 35 U.S.C. § 112, second paragraph*

Claims 16 and 17 were rejected as indefinite for depending from canceled claims and for lack of antecedent basis. As amended, dependency is corrected and proper antecedent basis is provided. Accordingly, Applicants respectfully request withdrawal of the rejections.

3. *Rejection under 35 U.S.C. § 103*

Claims 15-16, 23-26, 31-35 and 38-39 were rejected as allegedly obvious over Lowe *et al.* in view of Meijerink *et al.* The Examiner argued that Lowe *et al.* described a number of the steps of the claimed invention, but did not disclose "determining the efficiency of an amplification by determining a non-linear continuously differentiable function of a logarithm of copy number." See, Office Action, page 4. For the latter proposition, the Examiner cited Meijerink *et al.*, which the Examiner argued could be combined with the teachings of Lowe *et al.* In addition, claims 17 and 36-37 were rejected as allegedly obvious in view of Lowe *et al.*, Meijerink *et al.* and Wittwer *et al.* Applicants respectfully traverse the rejection.

Meijerink *et al.* is not prior art to the present application. According to the first page of Meijerink *et al.*, the reference was published in May 2001. The filing date of the present application is March 30, 2001, i.e., about a month **before** Meijerink *et al.* was published. Therefore, Meijerink *et al.* is **not** a proper reference to cite against the present claims.

Moreover, the Examiner is reminded that the present application claims priority to two German patent applications and a European patent application. The European application

Appl. No. 09/823,712
Amdt. dated October 19, 2004
Reply to Office Action of August 10, 2004

PATENT

(00 107 036.6) was filed on March 31, 2000. Thus, the claims have a priority date more than a year before the publication of Meijerink *et al.*

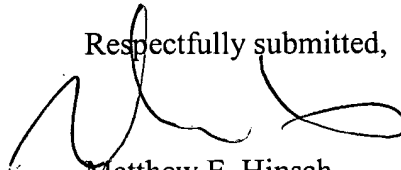
Since the Meijerink *et al.* reference is not prior art to the present application, and each rejection made by the Examiner relies on Meijerink *et al.*, Applicants respectfully request withdrawal of the rejections.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



Matthew E. Hinsch
Reg. No. 47,651

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
Attachments
MEH:meh
60330989 v1